

## **Significant Legislative Rule Analysis**

Medical Marijuana Consultant Certification  
WAC 246-72-010, 246-72-030, WAC 246-72-050, WAC 246-72-080, WAC 246-72-090, WAC 246-72-100, WAC 246-72-110, and WAC 246-72-120

Amendments to enhance and clarify training program requirements, education and other requirements of an instructor, continuing education, and practice parameters of a medical marijuana certified consultant.

October 15, 2021

## **SECTION 1:**

**Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.**

One of the conditions for a licensed marijuana retailer to sell tax-exempt medical marijuana is to have a Medical Marijuana Certified Consultant (certified consultant) with an active credential on staff. Certified consultants may register qualifying patients or their designated provider and assist them with purchases. Under RCW 69.51A.290, the Department of Health (department) licenses and regulates the certified consultant credential. To become a certified consultant, an applicant must complete a state-approved 20-hour training course that covers topic areas such as Washington state laws and rules relating to marijuana, qualifying conditions and common symptoms, short- and long-term positive and negative effects of cannabinoids, products that may benefit qualifying patients based on the patient's condition, any potential contraindications, and the risks and benefits of various administration methods, etc.

In response to a rule petition, the department is proposing amendments to portions of the chapter regarding continuing education (CE) for certified consultants. This includes a two-hour required course provided by the department, allowing the use of self-study programs, and clarifying specific topics to be included in each training.

Additionally, the department is proposing amendments to chapter 246-72 WAC to clarify the following:

- The definitions of as “designated provider” and “qualifying patient;”
- Training program requirements;
- Practice parameters of a certified consultant (e.g., assisting medical marijuana card holders with their purchases);
- Education and other requirements to be an instructor of an initial consultant training course; and
- Correcting citations and other house-keeping items

The overall goal of this proposal is to ensure certified consultants have a solid understanding of their role and knowledge of industry regulations, rules, and laws in order to ensure accurate information is being shared on the front end with the qualifying patients, designated providers, and consumers they are assisting.

## SECTION 2:

### Is a Significant Analysis required for this rule?

Yes, the portions of the rule described in section 5 of this document require analysis as described in RCW 34.05.328 because they:

- Establish, alter, or revoke certain qualifications or standards for the issuance, suspension, or revocation of a license, or
- Adopt a new, or make significant changes to, a policy or regulatory program.

The table below describes the rule sections in this proposal not requiring analysis along with a justification under RCW 34.05.328.

Proposed rule to chapter 246-72 WAC not requiring analysis

#	Proposed WAC Section / Title	Justification
1	WAC 246-72-010 - Definitions	Does not meet the definition of a significant rule under RCW 34.05.328(5)(c)(iii). Defined terms do not set standards, rather they are intended to provide clarity of the meaning of the terms used throughout the chapter.
2	WAC 246-72-030 - Practice parameters	RCW 34.05.328(5)(b)(iv), rule makes only typographical corrections, name or address changes, or clarifies language without changing the rules effect.
3	WAC 246-72-050 - Cooperation with investigation	RCW 34.05.328(5)(b)(iv), rule makes only typographical corrections, name or address changes, or clarifies language without changing the rules effect.
4	WAC 246-72-080 - Renewals and updating license information	RCW 34.05.328(5)(b)(iv), rule makes only typographical corrections, name or address changes, or clarifies language without changing the rules effect.
5	WAC 246-72-090 - Expired certificate	RCW 34.05.328(5)(b)(iv), rule makes only typographical corrections, name or address changes, or clarifies language without changing the rules effect.

---

## **SECTION 3:**

**Clearly state in detail the general goals and specific objectives of the statute that the rule implements.**

Chapter 69.51A RCW integrates the medical marijuana market with the regulated recreational marijuana market. Under the act, the department adopted rules for a medical marijuana authorization database (database), defined training, certification and practice standards for a medical marijuana consultant certification (consultant), and adopted rules regarding products sold to a qualifying patient (patient) and their designated providers.

The primary goals and objectives of chapter 69.51A RCW are ensuring patients have access to higher quality product to meet their medical needs, allow for sales and use tax breaks for qualifying medical marijuana patients who are entered into the database and to provide protection from arrest and prosecution for patients who are entered into the database.

The proposed rules are necessary to set and clarify operational and administrative standards of the database and certification standards and practice parameters for consultant certification. Specifically, the rule revisions clarify inconsistencies and knowledge gaps in medical marijuana consultant training per chapter 69.51A RCW by clearly defining expected training standards, necessary certification requirements and practice parameters for consultants in chapter 246-72 WAC. Amending such rules are necessary to provide the best public health and welfare.

---

## **SECTION 4:**

**Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.**

The department determined that the proposed revisions and amendments are needed to achieve the goals and objectives of chapter 69.51A RCW by supporting its overarching goal of ensuring qualifying patients have access to higher quality product and knowledgeable consultants to meet their medical needs and while ensuring related activities to the medical use of marijuana are in compliance with established law.

Currently, there is a gap in knowledge noted in medical marijuana consultants and how they assist patients with a medical marijuana authorization. The department received a petition to open the rule for revisions and is using this opportunity to assess the entire chapter for areas needing clarification or improvement.

The proposed amendments and rule revisions not only represent the department's commitment to achieve its statutorily defined goals and objectives, but clearly describe operational and administrative practice guidelines for licensed medical marijuana consultant training programs and for consultants interacting with the database and the regulated medical marijuana community.

If these rules are not adopted there will continue to be confusion about training standards and the role and knowledge of the certified medical marijuana consultant related to the authorization database and consultant certification which places patient privacy and safety at risk. Medical marijuana patients will continue to experience frustration with registering in the database and confusion when selecting products that may benefit their medical condition. The proposed rules are critical to ensuring that medical marijuana consultants are well trained and sharing consistent, accurate information with the patient community.

---

## SECTION 5:

**Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.**

### 1. Amending WAC 246-72-100 – Continuing Education

**Description of the proposed rule:** A medical marijuana consultant certificate holder must complete 10 hours of continuing education in order to renew their annual certification. The proposed rule amendments require two of the 10 hours be provided by the department at no cost to the consultant. Topics may include cannabis compliant products, cannabis laws and rules, and consultant roles and responsibilities. For the remaining eight hours of required continuing education, the proposed rule adds self-study to in-person and distance learning as another method to obtain hours. Self-study would be limited to two hours of the total 10 required hours. Required documentation of self-study courses would include a one-page single spaced typed essay with a synopsis of what the consultant learned. The proposed rule change also adds agricultural/chemical pesticides and qualifying medical conditions to the list of acceptable topics for continuing education.

**Cost:** There are no anticipated additional costs imposed by the rule proposal. There are potential cost savings for the certified consultants. The two-hour training program offered by the department and required as part of the annual continuing education will be provided at no cost to the consultant and would only require the consultant's time. The same is true for the two hours of self-study, which would be at no anticipated additional cost but a potential cost savings to the consultant and would only require the consultant's time.

**Benefit:** This rule allows a degree of flexibility to consultants in allowing them to pursue two hours of self-study that will likely be free of cost. The rule provides benefit to consultants by clearly outlining continuing education requirements and processes associated with maintaining an active consultant certification. It also acknowledges that there is not a wide variety of training courses on the subject of medical marijuana. By broadening the topics, ensuring two continuing education hours will be through a free department led course, and offering opportunities for creative learning through self-study, this proposed rule aims to create a robust learning environment for certified consultant to continue their industry training.

## 2. Amending WAC 246-72-110 – Training program requirements

**Description of the proposed rule:** Medical marijuana consultant training programs go through an approval process administered by the department. The proposed rule clarifies the minimum level of subject matter to be included in the five hours of training dedicated to Washington State laws and rules. These include purchase and possession limits, pesticide use, medical marijuana authorization process, and labeling and testing requirements.

The proposed rule amendment specifies that the department must be notified if an instructor of a training course is placed on a disciplinary order. Also, the proposal expands the list of potential instructors to include those with a bachelor's degree and at least seven years of verified experience in the regulated cannabis industry.

**Cost:** The proposed rule is anticipated to have a cost impact to the state-approved training programs. We contacted the 3 state-approved training programs about potential costs to them due to amending this rule. Two of the three training programs indicated they will only need one to two hours of staff time to update references and make small adjustments. The department estimates that staff are making \$43.27 per hour<sup>1</sup> and therefore the anticipated one-time costs range from \$43.27 to \$86.54. One-time cost is defined as a cost that will occur only once and will not be repeated. One of the three training programs indicated that they will hire an attorney at a rate of \$200 per hour for an anticipated eight hours to make the changes required for compliance with the proposed rule.

Allowing industry experts with at least seven years' experience and a bachelor's degree in any subject to teach an initial training program creates no additional costs to the medical marijuana consultant training programs.

---

<sup>1</sup> Job posting for a training program director found on 11/18/2021 at the following website: [Cannabis Industry Manager Jobs, Employment in Washington State | Indeed.com](#)

The department anticipates that the proposed rule language that mandates notification if an instructor of a training course is placed on a disciplinary order will add negligible costs (cost of staff time to write communication to department).

This proposed rule will not add any additional cost to training programs that may seek state approval in the future.

**Benefit:** The proposed rule will support a more rigorous and diverse pool of applicants eligible to teach the consultant training programs. By removing such specific education requirements as a barrier to eligibility, training programs may experience an increase in diverse and well qualified instructors which will increase the quality of training for certified consultants.

In addition, the topics added to the training program have been identified as knowledge gaps in certified consultants and enhancing the existing training with the additional topics will ultimately benefit the cannabis patient community. these recommended amendments serve to further the goals and objectives of the Cannabis Patient Protection Act (chapter 70, Laws of 2015) and can result in better patient care.

### **3. Amending WAC 246-72-120 – Approval of training program.**

**Description of the proposed rule:** The proposed rule would require an authorized representative from the state-approved medical marijuana consultant training programs to report any change of the instructor's credential to the department.

**Cost:** The proposed rule will have no anticipated cost impact to the initial training programs. A representative from the training programs is already required to report any changes from their initial application to the department and the proposed rule change only adds one additional item that would need to be reported should a change in the instructor's license status occur.

**Benefit:** The benefit of the proposed rule is the further ability for the department to maintain quality education programs by knowing and monitoring the qualifications of those tasked with teaching the courses.

**Cost Benefit Summary:** Under current rule, the department identified some areas that have resulted in knowledge gaps in certified consultants and consultant certification requirements. The recommended amendments close these gaps with minimal cost impact on training programs and potential cost savings for consultants while increasing patient safety within the regulated community by creating training program requirements that strengthen knowledge and keeps the focus on the needs of the patient community. The department estimates that one-time cost ranges from \$43.27 to \$1,600 in order to bring each of the 3 existing state-approved training programs into compliance with the proposed requirements. Additionally, these recommended amendments serve to further the goals and objectives of the Cannabis Patient Protection Act (chapter 70, Laws of 2015) and can result in better patient care.

In conclusion, the department determined the probable benefits of the rule outweigh the probable costs.

---

## **SECTION 6:**

**Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.**

Department staff worked closely with interested parties to collect input that has informed rule revisions concerning the medical marijuana consultant certification program. Mutual interests were identified and considered through deliberations. In the petition it was noted that the training requirements were too vague and that after interacting with various certified consultants in medically endorsed retail stores, knowledge was severely lacking in several areas including department compliant product, legal holding and growing limits, and labeling requirements.

The department's rulemaking process encouraged parties to:

- Identify burdensome areas of the existing rules;
- Propose initial and draft rule changes; and
- Refine those changes

Summarized below are brief descriptions of questions and comments received from interested parties, as well as the department's considerations regarding the proposed rule. The rules proposed are the least burdensome alternative for the entities required to comply, and will achieve the statutorily described general goals and specific objectives of chapter 69.51A RCW.

**Alternative considered:** Increasing the amount of CE hours required to renew a medical marijuana consultant certificate.

**Department consideration:** The idea of increasing CE hours for renewal of the consultant certificate was strongly considered. The department considered increasing the required hours from ten up to twelve annually. It was determined that this increase was not appropriate because other professions with a similar education and training level requirements do not require more than ten hours of annual CE to maintain licensure. As a result, the department determined that the number of hours required per year for medical marijuana consultants should not be increased.

**Alternative considered:** Requiring certain topics be studied for the annual CE requirements? Currently topic parameters exist, but there are no specifications as to how many hours should be spent studying each topic.



**Department consideration:** One of the challenges with the continuing education is that specific courses can be difficult to find, especially in the smaller increments of 1-2 continuing education credits. The department does not want to set standards for consultants that are impossible or nearly impossible to meet and create unintended barriers to continued licensure so it was determined that the department should not require a certain amount of hours be spent on specific topics in order to meet the continuing education requirements.

**Alternative considered:** Requiring consultants who have let their certificate lapse longer than one year re-take the initial training program, instead of the current requirement of three or more years.

**Department consideration:** Although the idea to lower the requirement from three years down to one year to re-take the initial training was strongly considered, the department compared other similar profession's requirements and the current regulation of three years is in line with other professions of similar education and training requirements. Therefore, it was determined that the number of years a consultant can let their credential lapse before having to re-take the initial training program should not be reduced.

The proposed rules went through several stages of edits, internal and external review and discussion, then further refinement before arriving at the final proposal.

The proposed rules represent the least burdensome alternative by providing clear training and annual continuing education requirements requested by retail store owners, patients and consultants and increase the safety and protection of the patient taking into consideration probable costs to regulated retailers, training programs and certified consultants. The result of this process are proposed changes that will provide increased rule clarity, consultant training guidance and will ultimately lead to well-trained certified consultants.

---

## **SECTION 7:**

**Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.**

The proposed rule does not require those to whom it applies to take an action that violates requirements of another state law.

The proposed rule does not require any person to violate federal law. However, those persons who voluntarily choose to become certified as a medical marijuana consultant are technically violating federal law by possessing and selling marijuana, a schedule 1 controlled substance. The proposed rule puts limits and requirements on certificate

holders Cannabis Patient Protection Act (chapter 70, Laws of 2015). This contributes to a strong and effective regulatory system in Washington.

---

## **SECTION 8:**

**Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.**

The proposed rule does not impose more stringent performance requirements on private entities than on public entities. The rules apply to individuals primarily as the certificate holders, organizations interested in forming a consultant training program, and to medically endorsed retail stores who hire the certified consultants. Both private and public entities who want to become an approved training program or retail store are given the same requirements that apply to the certified medical marijuana consultants. These rules do not change the requirements for one entity versus the other, and do not impose more stringent performance measures on public or private entities.

---

## **SECTION 9:**

**Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.**

The rule differs from federal law because federal law prohibits the possession and sale of marijuana (Schedule 1 drug). The difference is justified because while cannabis remains prohibited by federal law, most states, including Washington have developed carefully regulated cannabis laws and regulations and this rule proposal continues to support a rigorous and effective state regulation system.

---

## **SECTION 10:**

**Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.**

The proposed rule is coordinated to the maximum extent practicable with other applicable laws, including current medical cannabis law under chapter 69.51A RCW.

The rule has been coordinated with other state rules to ensure a consistent and comprehensive regulatory system in Washington. While it inherently conflicts with federal law, it conforms with regulatory expectations that have been practiced and maintained on the state level for several years.